injured child refutes that theory. Did he succeed to his mother's rights?

"The modern tendency of decided cases is to ignore fictions and deal with things as they are. At common law a cause of action for personal injuries did not survive if death resulted from another's negligence or wrongful act. Lord Campbell's Act, passed in England in 1846, and followed generally in this State (Code Civ. Proc., sec. 1905), was necessary to correct this omission. May this court attach an unnatural meaning to simple words and hold independently of statute that a cause of action for prenatal injuries is reserved to the child until the moment of its birth and then accrues? The formulation of such a principle of legal liability against precedent and practice may be a tempting task, to which sympathy and natural justice point the way, but I cannot bring myself to the conclusion that plaintiff has a cause of action at common law. The injuries were, when inflicted, injuries to the mother. No liability can arise therefrom except out of a duty disregarded, and defendant owed no duty of care to the unborn child in the present case apart from the duty to avoid injuring the mother. Strong reasons of public policy may be urged both for and against allowing the new right of action. The conditions of negligence law at the present time do not suggest that the reasons in favor of recovery so far outweigh those which may be advanced against it as to call for judicial legislation on the question."

Libel and Slander—District Attorney's Statement to Officer Held Privileged.—In Stivers *v.* Allen, 196 Pac. 663, the Supreme Court of Washington held that a United States district attorney's statement to plaintiff, in the presence of a United States secret service operative, indicating his belief that plaintiff had in his possession a "no-conscription circular," under such circumstances as to suggest a violation of the federal Criminal Code was not actionable, the situation being the same as if the words had been spoken directly to the secret operative, and the communication under the circumstances being absolutely privileged.

The court said in part: "'Defamatory words, uttered only to the person concerning whom they are spoken, no one else being present or within hearing, are not actionable, because it is necessary as an invariable rule that there be a publication of the defamatory words to someone other than the person defamed, to render the same actionable.' 17 R. C. L. 315.

"It seems plain, therefore, that we have here a case where one officer of the government used language in the presence of another officer of the government—no one else being present or within hearing, in so far as we are concerned with the question of the publication of such language—indicating his belief that appellant had in his possession a 'no-conscription circular' under such circumstances as to

suggest a violation of the Federal statutes providing for the punishment of seditious conspiracy; both officers acting together to a common end, and being then and there charged with the duty of investigating and bringing to justice persons who might be guilty of seditious conspiracy under the Federal statutes. We are only assuming, for argument's sake, that the words complained of are actionable as slanderous, or could be so regarded upon proper innuendo, pleading, and proof.

"Viewing the alleged slanderous words as being spoken by respondent to Jarrell, the secret service officer, and no one else hearing them—as for present purposes they must be viewed—we think they constitute an absolute privileged communication from respondent to Jarrell. They manifestly were not spoken with any thought that they should ever be given to the world, or that anyone else should ever learn of their utterance, other than appellant and Jarrell, the secret service officer."

Negligence—Liability of Wrongdoer for Injuries to Rescuer.—In Wagner *v.* International Ry. Co., 133 N. E. 437, the court of Appeals of New York held that a wrongdoer imperiling life is accountable for injury to the rescuer if the risk of rescue be not wanton, though the coming of a rescuer may not have been foreseen.

The court said in part: "Danger invites rescue. The cry of distress is the summons to relief. The law does not ignore these reactions of the mind in tracing conduct to its consequences. It recognizes them as normal. It places their effects within the range of the natural and probable. The wrong that imperils life is a wrong to the imperiled victim; it is a wrong also to his rescuer. The state that leaves an opening in a bridge is liable to the child that falls into the stream, but liable also to the parent who plunges to its aid. Gibney *v.* State of N. Y., 137 N. Y. 1, 33 N. E. 142, 19 L. R. A. 365, 33 Am. St. Rep. 690. The railroad company whose train approaches without signal is a wrongdoer toward the traveler surprised between the rails, but a wrongdoer also to the bystander who drags him from the path. Eckert *v.* L. I. R. R. Co. 43 N. Y. 502, 3 Am. Rep. 721. Cf. Matter of Waters *v.* Taylor Co., 218 N. Y. 248, 112 N. E. 727, L. R. A. 1917A, 347. The rule is the same in other jurisdictions. Dixon *v.* N. Y. N. H. & H. R. R. Co., 207 Mass. 126, 130, 92 N. E. 1030, and Bond *v.* B. & O. R. R. Co., 82 W. Va. 557, 96 S. E. 932, 5 A. L. R. 201, with cases there cited. Cf. 1 Beaven on Negligence, 157, 158. The risk of rescue, if only it be not wanton, is born of the occasion. The emergency begets the man. The wrongdoer may not have foreseen the coming of a deliverer. He is accountable as if he had. Ehrgott *v.* Mayor, etc., of N. Y., 96 N. Y. 264, 280, 281, 48 Am. Rep. 622.

"The defendant says that we must stop, in following the chain of causes, when action ceases to be 'instinctive.' By this is meant, it